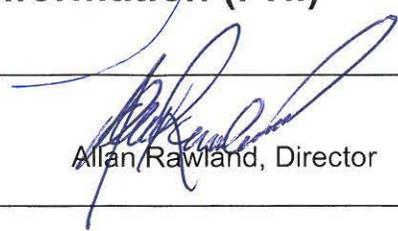


County of San Bernardino
Department of Behavioral Health

Confidentiality of Protected Health Information (PHI)

Effective Date 01/03/07
Revision Date 10/04/2010



Allan Rawland, Director

Policy It is the policy of the Department of Behavioral Health (DBH) that all members of the DBH workforce adhere to State confidentiality, privacy and security laws and the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and to apply those laws and regulations which provide the greatest degree of protection and autonomy for its clients, within the scope of providing care, treatment and business.

Purpose To outline the systems in place at DBH that govern and provide guidance about the confidentiality, privacy and security of client Protected Health Information (PHI).

Definitions

Preemption of State Laws: In cases of perceived conflict among laws and/or regulations, the general rule is that precedence is given to the law and/or rule which provide the client with the greatest protection of client privacy or autonomy. However, with regard to specific disclosures, if the disclosure is required by law (whether State or Federal); the disclosure is permitted without constituting a violation of law. Questions regarding pre-emption issues may be directed to the DBH Privacy Officer

Business Associate: A person who, on behalf of a covered entity, but other than in the capacity of a member of the workforce of such covered entity, performs or assists with a function or activity involving the use or disclosure of individually identifiable health information

Covered Entity: A health plan, healthcare clearinghouse, or healthcare provider that transmits any health information in electronic form

Designated Record Set: Any and all constituent parts of the medical and billing records, regardless of authorship and media type (electronic, paper, microfiche or verbal). These medical and billing records are the property of the County of San Bernardino and DBH and may not be reproduced or removed from DBH except as prescribed by State and Federal law and DBH policies and procedures consistent therewith.

Disclosure: The release, transfer, provision of access to, or divulging in any other manner of, PHI outside the covered entity holding the information.

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Definitions
(continued)

Individually Identifiable Health Information (IIHI): Information including demographic information collected from an individual, and created or received by a healthcare provider, that relates to the past, present, or future physical or mental health or condition of an individual; the provision of healthcare to an individual; or the past, present, or future payment for the provision of healthcare to an individual; and that identifies the individual, or to which there is a reasonable basis to believe the information can be used to identify the individual

Protected Health Information (PHI): Individually identifiable health information that is transmitted or maintained in any form or medium (electronic, paper, microfiche or verbal)

Use: With respect to individually identifiable health information, the sharing, employment, application, utilization, examination, or analysis of such information within a covered entity that maintains such information

Workforce: Employees, volunteers, trainees, students, and other persons whose conduct, in the performance of work for a covered entity, is under the direct control of such entity, whether or not they are paid by the covered entity

Compliance

If requested, DBH will provide records and compliance reports related to its privacy and confidentiality programs to the Secretary of Health and Human Services. DBH will cooperate with compliance investigations and reviews by state and federal oversight agencies.

Administrative Requirements

DBH, as a covered entity under HIPAA, must adhere to the following administrative requirements:

Requirement	Description
Personnel Designations	<ul style="list-style-type: none"> • Designate a Privacy Officer who is responsible for the development and implementation of the privacy policies and procedures at DBH. • Privacy Officer is designated as the contact person for client and employee privacy and confidentiality complaints and provides information about matters covered by HIPAA and other privacy and confidentiality issues. • Privacy Officer is available to advise staff concerning the requirements of both State Law (W&I Code 5328) and HIPAA, and to facilitate resolution of possible conflicts between these laws. The Privacy Officer is also available to advise staff concerning requirements of 42 CFR and to facilitate resolution of possible conflicts between HIPAA, 42 CFR and State Law

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Administrative Requirements (continued)

Requirement	Description
Training of Workforce	<ul style="list-style-type: none"> • Entire DBH workforce will receive training on privacy, security and confidentiality policies and procedures to the degree necessary and appropriate to carry out their duties and responsibilities regarding PHI and PII. • Training will be taken via the online Learning Management System within thirty (30) days from commencement of employment, internship, work experience or volunteerism. • Staff shall take the HIPAA Privacy and Security Training annually.
Safeguards	DBH will take reasonable steps to safeguard PHI from intentional or unintentional misuse, regardless of medium (electronic, hard-copy, etc.). DBH will have appropriate administrative, technical, and physical safeguards in place to protect the privacy of PHI. Additionally, DBH will limit incidental users or disclosures of PHI that are made pursuant to an otherwise permitted or required use or disclosure.
Waiver of Rights	DBH cannot require clients to waive their right to file a privacy and/or confidentiality complaint with the Office of Civil Rights, US Department of Health and Human Services, as a condition for treatment, payment, or billing for services provided, nor can DBH require workforce members to waive their rights to file a privacy and/or confidentiality complaint with the Office of Civil Rights, US Department of Health and Human Services as a condition of employment.
Documentation	DBH must maintain the policies and procedures related to privacy and confidentiality of PHI in written or electronic form for six (6) years from the date of creation or the date when they were last in effect, whichever is later. See Security of Protected Electronic Health Information policy.

Uses and Disclosures of Protected Health Information

PHI will be used for treatment, payment or billing activities, and for necessary operations. PHI will be disclosed as permitted by applicable laws and/or regulations, or in accordance with an authorization signed by the clients or their legal representative.

See [Authorization to Release Confidential Protected Health Information](#) policy.

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Minimum Necessary	The use and disclosure of PHI shall be restricted to the minimum necessary to fulfill the reason for the use, request or disclosure of PHI.
Notice of Privacy Practices	Each client will be provided information in writing, in the language of their preference, about their privacy rights and how their PHI may be used and disclosed. See HIPAA Notice of Privacy Practices policy.
Request for Privacy Protection	A client has the right to request restriction of uses and disclosures of their PHI. DBH must permit a client to request that the use or disclosure of their PHI be restricted. DBH is not required to agree to a requested restriction.
Client Access to PHI	To the extent permitted by law, a client has a right of access to inspect and obtain a copy of their PHI in the designated record set, for as long as the PHI is maintained in the designated record set. See Client Access and Amendment of Medical Record policy.
Amendment of PHI	The client has the right to request amendment/correction of PHI of a document in a designated record set. Such requests will be made in writing on the appropriate form set. See Client Access and Amendment of Medical Record policy.
Accounting of PHI Disclosures	<ul style="list-style-type: none">• To the extent permitted by law, a client has the right to receive an accounting of PHI disclosures made by DBH in the six years prior to the date on which the accounting is requested, except for disclosures:<ul style="list-style-type: none">– To carry out treatment, payment or billing, and health care operations– To the client– Pursuant to an authorization signed by the client or client's representative– For national security or intelligence purposes– To correctional institutions or law enforcement officials– To the courts or court officials– That occurred prior to the HIPAA compliance date (April 14, 2003)• Clients may request one (1) accounting of disclosures free of charge every twelve (12) months. Additional requests within the same 12-month period will result in a charge to the client.

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Accounting of PHI Disclosures DBH may disclose PHI to a business associate and may allow a business associate to create or receive PHI on its behalf, if DBH obtains satisfactory assurance that the business associate will appropriately safeguard the information.

DBH must document the satisfactory assurance required by this section through written contract or other written agreement or arrangement with the business associate.

Business Associate is held to the same standard as the covered entity to ensure that PHI is protected and that any breach of unsecured PHI is reported in accordance with the written agreement of the Business Associate.

Research DBH may use or disclose PHI for research provided that the research meets all applicable State or Federal laws or regulations. DBH may use or disclose PHI for the research project, but if it is not authorized by the subject client, then the PHI must be de-identified on all documents to the extent required by law.

All research requests must be approved through the DBH's Institutional Review Board (IRB).

References Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, Privacy Rule (HIPAA)
California Welfare and Institution Code, Section 5328 et seq. (Lanterman-Petris-Short Act)
Health and Safety Code (Information Practices Act of 1977), Section 1798 et seq.
Title 42 of the Code of Federal Regulations CFR, Section 2.1 et seq.
California Civil Code 56 et seq. (The Confidentiality of Medical Information Act)
California Health & Safety Code 123100 et seq. (Client Access to Health Records)

Related Policies County of San Bernardino Policy Manual, 16-01, [Non-Public Personally Identifiable Information](#)
County of San Bernardino Policy Manual, 16-02, [Protection of Individually Identifiable Health Information](#)
County of San Bernardino Standard Practice, 16-02SP1, [Protection of Individually Identifiable Health Information](#)
DBH Standard Practice Manual, COM0901, [Sending Confidential Information by Facsimile Policy](#)

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**Related
Policies**
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DBH Standard Practice Manual, COM0907, [Unauthorized Access of Confidential Medical Records Policy](#)

DBH Standard Practice Manual, COM0909, [Electronic Transfer of Client Protected Health Information – Internet and Intranet Policy](#)

DBH Standard Practice Manual, COM0924, [Workstation and System Security Policy](#)

DBH Standard Practice Manual, COM0925, [Data Integrity Policy](#)

DBH Standard Practice Manual, COM0926, [HIPAA Violation Sanctions Policy](#)

DBH Standard Practice Manual, COM0943, [Medi-Cal Eligibility Data System \(MEDS\) Policy](#)

DBH Standard Practice Manual, COM0944, [Privacy or Security Breach Policy](#)

DBH Standard Practice Manual, IT5004, [Computer and Network Appropriate Use Policy](#)

DBH Standard Practice Manual, IT5005, [Electronic Mail Policy](#)

DBH Standard Practice Manual, IT5006, [Remote Access Policy](#)

DBH Standard Practice Manual, IT5008, [Device and Media Controls Policy](#)

DBH Standard Practice Manual, IT5009, [User I.D. and Password Policy](#)
